

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CAROLYN ROOT, et al.,

Appellants,

v.

ROBERT ENGLAND, et al.,

Respondents.

DOCKET NUMBER WD70351

DATE: August 4, 2009

Appeal from:

The Circuit Court of Saline County, Missouri
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
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WD70351

Saline County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Carolyn Root, et al., appeal the judgment of the Circuit Court of Saline County, dismissing their petition to contest the validity of the will of Charles Junior Mabrey for failure to serve all necessary defendants within the ninety days required by section 473.083.6, RSMo 2000. The will was defended by the personal representative of the estate, Charles “Chuck” Mabrey, and all named beneficiaries of the will, eighteen individuals in total. On appeal, Root presents one point.

REVERSED.

Division Two holds:

Root failed to serve all eighteen defendants within the ninety days required by statute. She maintained that this failure was excused because it fell under the statute’s exception for not serving all defendants when service had been pursued diligently and there existed good cause for service not succeeding. Root began service the day after filing the lawsuit and pursued service diligently. So diligently that, despite the inevitable difficulties that arise when serving eighteen individuals in seven different states, Root succeeded in serving sixteen of the defendants within ninety days. Because the difficulties in service were outside of her control, Root had good cause under the statute for failing to serve all eighteen defendants.

In granting the defendants’ motion to dismiss, the trial court erred in not correctly calculating the efforts of Root and improperly weighed the difficulties of serving a large and scattered group of defendants.

Opinion by: Mark D. Pfeiffer, Judge

Date: August 4, 2009

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